No. 17-1351

THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, a project of the Urban Justice Center, Inc., on behalf of itself; HIAS, INC., on behalf of itself and its clients; MIDDLE EAST STUDIES ASSOCIATION OF NORTH AMERICA, INC., on behalf of itself and its members; MUHAMMED METEAB; PAUL HARRISON; IBRAHIM AHMED MOHOMED; JOHN DOES #1 & 3; JANE DOE #2

Plaintiffs – Appellees,

v.

DONALD J. TRUMP, in his official capacity as President of the United States; DEPARTMENT OF HOMELAND SECURITY; DEPARTMENT OF STATE; OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE; JOHN F. KELLY, in his official capacity as Secretary of Homeland Security; REX W. TILLERSON, in his official capacity as Secretary of State; DANIEL R. COATS, in his official capacity as Director of National Intelligence

Defendants – Appellants.

On Appeal from the United States District Court, District of Maryland,
The Honorable Theodore D. Chuang, United States District Judge

(8:17-cv-00361-TDC)

BRIEF OF *AMICI CURIAE* AIRPORT ATTORNEYS COALITION
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STATEMENT OF INTEREST OF *AMICI CURIAE*[1]

Amici curiae are attorneys with a range of legal backgrounds, specialties, and United States jurisdictions, with one interest in common: averting the crisis caused by the implementation of the first travel ban and compounded by the issuance of the second. *Amici* are the "first responders" who gathered at international airports across the country to assist disenfranchised travelers affected by the ban.[2] As front-line, "on the ground" legal practitioners, we offer insight into the ways in which the travel bans infringed in practice on the constitutional rights of citizens and non-citizens attempting to cross the American threshold, and continue to create an environment of fear and uncertainty in our daily legal practice.

Amici have a compelling shared interest in this case because a ruling that lifts the injunction on the second travel ban would inflict significant irreparable harm to our clients' constitutional rights and hinder our ability to provide effective counsel regarding their status, rights, or available remedies. We need access to our clients when legal decisions with irrevocable consequences are being made, and confidence in settled immigration principles to counsel our clients on how to protect their legal rights or status and move freely across borders. *Amici* therefore submit this brief in support of Appellees.

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[1] *Amici* file this brief pursuant to Fed. R. App. P. 29(a)(2). Counsel for plaintiffs and defendants consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person, including *amici curiae*, its members, or its counsel has made a monetary contribution to its preparation or submission.

[2] A full list of *amici* is shown at Attachment A and additional members of the coalition of attorneys that gathered across the world are shown in a letter of support at Attachment B with 302 signatories from 25 airports, including representatives from U.S. airports in Baltimore, Boston, Chicago, Dallas, Denver, Hartford, Las Vegas, Los Angeles, Miami, Minneapolis, New Jersey, New York, Oakland, Philadelphia, Phoenix, San Francisco, Seattle, and the Washington, D.C. area, and international airports in Amsterdam, Armenia, Bahrain, Iraq, and Qatar.

BACKGROUND

When the original travel ban was signed on Friday, January 27, 2017, it was unclear how that ban might affect travelers and their rights to enter the country under approved refugee status, various visas, or lawful permanent residency. It soon became obvious that *no one* understood exactly how the ban should be implemented – certainly not the United States Customs and Border Protection ("CBP") agents responsible for enforcing the ban.[3] Travelers and their lawyers walked onto a stage where no one knew their lines, in unscripted scenes that became horror stories for many.[4]

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[3] *See* Jonathan Allen & Brendan O'Brien, *How Trump's abrupt immigration ban sowed confusion at airports, agencies*, Reuters (Jan 29, 2017), http://www.reuters.com/article/us-usa-trump-immigration-confusion-idUSKBN15D07S.

[4] Mark Joseph Stern, *"Just Following Orders:" Horror stories about the lawlessness of Customs and Border Protection agents in the aftermath of Trump's immigration ban*, Slate (Feb. 2, 2017), http://www.slate.com/articles/news_and_politics/jurisprudence/2017/02/how_badly_did_cbp_treat_visa_holders_read_these_horror_stories.html.

Chaos reigned.[5] Outside the U.S., some travelers attempting to return from a family visit or a business trip were prevented from boarding aircraft bound for home.[6] Others successfully landed, only to be deported, sometimes forcibly and only after being coerced into signing away their lawful status.[7] A lucky few eventually cleared customs, but sometimes only after hours of detention without food, water, or medication.[8] One Sudanese doctor with a work permit was returning to her Cleveland Clinic residency from a family visit, and detained for ten hours.[9] She was given food and permission to use a phone *only* after she signed a form agreeing to be deported.[10] She, like many others, was refused access to her attorney throughout this process.[11]

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[5] Deepa Hajela & Michael Tarm, *Trump travel ban sows chaos at airports, outrage at protests*, Associated Press (Jan. 29, 2017), https://apnews.com/7dad23d6e297467b89be8e5d019aecc8.

[6] Doug Stanglin & Alan Gomez, *Court grants temporary, emergency stay of Trump's immigration ban*, USA Today (Jan. 28, 2017), https://www.usatoday.com/story/news/2017/01/28/trump-refugee-ban-blocks-7-migrants-boarding-ny-bound-plane-cairo/97181446/.

[7] *See* Stern, *supra* n.4; *see also* James Queally & Joel Rubin, *Iranian man barred from entering U.S. lands at LAX; first to return after court order*, L.A. Times (Feb. 2, 2017) http://www.latimes.com/local/lanow/la-me-ln-iran-return-lax-20170201-story.html.

[8] *See* Pryor Decl. ¶4 (Attachment L), and Eli Rosenberg & Liam Stack, *Banned from U.S.: 'You Need to Go Back to Your Country,'* N.Y. Times (Jan. 28, 2017), https://www.nytimes.com/2017/01/28/us/us-immigration-ban.html.

[9] *See* Stern, *supra* n.4.

[10] *Id.*

[11] Each of the airport attorneys providing declarations hereto attests to being denied access to their clients by CBP at their various locations in San Francisco, Los Angeles, Chicago, Washington, D.C., Seattle, or Dallas Fort-Worth, respectively. *See* Ahmad Decl. ¶19, Baron Decl. ¶5, Calderon Decl. ¶¶8-11, Corrales Decl. ¶¶6-

Airports were at the epicenter of the damage inflicted by the sudden enactment of a new policy, hastily issued by a week-old presidential administration without prior vetting by the Departments of States or Homeland Security.[12] The legal community responded, ready to assist and triage. Amidst the disorder, a grassroots movement of lawyers, organizers, translators, and community members formed.[13]

The coalition of "airport attorneys" who first responded to the crisis continued to grow nationwide in the following weeks.[14] When the second travel ban issued on March 6, 2017, we were again ready to assist people stranded worldwide, arriving travelers, and their anxious families.[15] As with the first ban,

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9, Cubas Decl. ¶¶7-9, Inlender Decl. ¶3, Krooth Decl. ¶¶4-5, London Decl. ¶9, Patnaik Decl. ¶¶4,6, Pryor Decl. ¶4, Shebaya Decl. ¶¶6-11, Valko Decl. ¶¶7-8, and Yamada Decl. ¶¶ 6-7, enclosed with Attachments at Attachment C through O.

[12] *See*, *e.g.*, Michael D. Shear & Ron Nixon, *How Trump's Rush to Enact an Immigration Ban Unleashed Global Chaos*, N.Y. Times (Jan. 29, 2017), https://www.nytimes.com/2017/01/29/us/politics/donald-trump-rush-immigration-order-chaos.html?_r=1; *see* Allen & O'Brien, *supra n*.3.

[13] *See* Jonah Engel Bromwich, *Lawyers Mobilize at Nation's Airports After Trump's Order*, N.Y. Times (Jan. 29, 2017), https://www.nytimes.com/2017/01/29/us/lawyers-trump-muslim-ban-immigration.html; *see also* Kaveh Waddell, *An Army of Attorneys Descends on Dulles*, The Atlantic (Jan. 20, 2017), https://www.theatlantic.com/politics/archive/2017/01/an-army-of-lawyers-stands-by-to-help-at-dulles-airport/514853/.

[14] Darran Simon, *Attorneys: travel ban fight is 'a marathon' with no end in sight*, CNN (Mar. 7, 2017), http://www.cnn.com/2017/03/06/us/attorneys-activists-fighting-travel-ban/.

[15] Emma Whitford, *Activists and Lawyers Are Preparing for Trump's New Travel Ban to Drop at Midnight*, Gothamist (Mar. 15, 2017), http://gothamist.com/2017/03/15/trump_travel_ban_protest.php.

CBP practices - and the scope of the agency's authority to detain travelers or demand that they make concessions or waive their rights - remain undefined and seemingly unchecked.[16] Travelers continue to report harassment and being held or detained for vague, arbitrary reasons without access to counsel, subjected to increased scrutiny and searches, often due to their national origin or religious affiliation.[17] Our conversations with clients are dominated by fear and anxiety as the ability to travel for work, studies, or momentous family occasions are no longer a given in light of the "complete and utter chaos" caused by the combined executive orders.[18] The only thing that is certain right now is uncertainty. *Amici* fear that lifting the injunction and permitting enforcement of the second travel ban will lead to further injury to our clients and other travelers, whether U.S. citizens, immigrants, or citizens of another country.[19]

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[16] *See* Dara Lind, *The chaos of Trump's executive order left field agents on their own – with tremendous power*, Vox (Feb. 2, 2017), http://www.vox.com/policy-and-politics/2017/2/2/14486138/customs-border-abuse; *see also* Will Bunch, *Just following orders? Trump's not-so-secret police go wild*, The Philadelphia Inquirer (Feb. 27, 2017) http://www.philly.com/philly/blogs/attytood/Just-following-orders-Trumps-goon-squad-goes-wild.html.

[17] *See* Alex Kane, *Even Muslim-American Citizens Have Been Caught in the Net of Trump's Travel Ban*, The Nation (Mar. 23, 2017), https://www.thenation.com/article/even-muslim-american-citizens-have-been-caught-in-the-net-of-trumps-travel-ban/.

[18] *See* Simon, *supra* n.14.

[19] *See* Bunch, *supra* n.17 (noting that President Trump's broader vision has been voiced by press secretary Sean Spicer as one that "take[s] the shackles off" federal officers under DHS); Lind, *supra* n.17.

ARGUMENT

I. THE FIRST TRAVEL BAN'S IMPLEMENTATION CAUSED DUE PROCESS VIOLATIONS AND DISRUPTED TRAVELERS' LIVES.

A. The First Travel Ban Created Chaos and Violated Due Process Rights.

It is well-established that non-citizens have a right to due process under the Fifth Amendment.[20] As briefed extensively by the various plaintiffs in the travel ban cases and upheld by courts ruling on the first travel ban, summary revocation of immigrant visas, refugee status, and other entry documents raises serious due process concerns, particularly when motivated by discriminatory animus and lacking an adequate national security rationale.[21] The same concerns apply to denial of entry and freezes on visas or refugee admissions that are undertaken with such animus, and without genuine national security justifications.[22]

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[20] US Const. Amend. V; *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent."); *Pyler v. Doe*, 457 U.S. 202, 210 (1982) ("[w]hatever his status under the immigration laws, an alien is surely . . . a "'person[]' guaranteed due process of law by the Fifth and Fourteenth Amendments").

[21] *See, e.g.*, *Washington v. Trump*, 847 F.3d 1151 (9th Cir. 2017); *Aziz v. Trump*, No.1:17-cv-117 (E.D.Va. Feb. 13, 2017)("Ironically, the only evidence in this record concerning national security indicates that the E[xecutive] O[rder] may make the country *less* safe.") (emphasis in original); *Darweesh v. Trump*, No.17 CV 480 (AMD), 2017 WL 388504 (E.D.N.Y. Jan. 28, 2017).

[22] *See, e.g.*, *Hawaii v. Trump*, No.1:17-cv-00050 DKW-KSC 2017 WL 1011673, at *17 (D. Haw. Mar. 15, 2017) (order granting preliminary injunction); *IRAP v. Trump*, No.TDC-17-0361, 2017 WL 1018235, at *18 (D. Md. Mar. 16, 2017)(order granting preliminary injunction).

Indeed, preventing entry to refugees or asylees with lawful status on arrival and then subjecting them to deportation to a country where they fear for their lives is "so egregious [as to] shock[] the conscience and . . . violate[] due process principles." *Wang v. Reno*, 81 F.3d 808, 819 (9th Cir. 1996). Just as in *Wang*, many non-citizens who were denied entry, whose visas were no longer processed, or who are being subjected to additional scrutiny and delays as a result of the travel bans fear persecution in their home countries or are currently in dangerous circumstances.[23]

We witnessed this firsthand in the earliest days following the first executive order's issuance, when travelers were denied access to their attorneys and were detained, deported, or stranded in airports across the globe. Travelers, including our clients, suffered harrowing ordeals at the airport borders and were denied due process, even in extreme situations where they had risked their lives for the United States and/or feared persecution in their home countries. Below is a representative sampling of people who reported due process violations under the first travel ban:

Faud Shareef served as a translator for American forces in Iraq, receiving death threats due to his job.[24] After successfully completing the lengthy vetting process, he and his family were cleared to resettle in Nashville.[25] They sold their car, their home, quit their jobs, and withdrew their daughters from school—but during their layover in Cairo, they were told they would not be allowed to board their U.S.-bound flight.[26]

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[23] *See* Amended Complaint ¶154; *see also* Conchita Cruz & Swapna Reddy, *Why Deportation Could Mean Death for Some Refugees*, Time (Mar. 9, 2017) http://time.com/4696017/deportation-death-refugees-asylum/.

[24] *See* Rosenberg & Stack, *supra* n.4.

[25] *See id.*

Another green card holder, arriving in Los Angeles from Iran, was pressured by federal officers for hours and repeatedly denied access to his attorneys. After an overnight detention with no food or place to sleep, he was coerced into signing a document agreeing to give up his green card.[27] CBP officials said that "he could be permanently banned from the United States if he did not" sign away his rights, and he was forcibly carried onto a Dubai-bound plane.[28] He and his family were "desperately afraid about [his] return[] to Iran" due to potential government persecution.[29] A federal district judge issued an order mandating that U.S. officials return him from Dubai to the United States, but officials put him on a Tehran-bound flight instead.[30]

Similarly, Jordanian citizen Abu Romman was detained, and had his visa cancelled and revoked by CBP at O'Hare, who did not allow him to contact his family, lawyer, or embassy before forcing him to sign papers agreeing to be deported. Reflecting on his predicament, he recalled that his father, a graduate from the University of Illinois, had always told him that "America is the land of justice . . . [b]ut I think things have changed."[31]

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[26] *See id.*

[27] *See* Jennifer Medina, *He Was Sent Back to Iran. Now, a Court Says the U.S. Must Readmit Him.*, N.Y. Times (Jan. 30, 2017), https://www.nytimes.com/2017/01/30/us/iran-brothers-travel-ban-ali-vayeghan.html.

[28] *See* Queally & Rubin, *supra* n.7.

[29] *See* Letter to John Roth, DHS Inspector General Re: Abuses in the Aftermath of the January 27, 2017 Executive Order and Importance of Access to Counsel in Airport Detention (Feb. 6, 2017) at https://ccrjustice.org/letter-john-roth-dhs-inspector-general.

[30] *See* Queally & Rubin, *supra* n.7.

In the days before the first travel ban was enjoined, these and similar stories "shock[ed] the conscience"—as evidenced by the thousands of lawyers, volunteers, and demonstrators who swarmed the airports demanding an end to these due process violations.[32] First-hand reports from around the country show that such stories were commonplace, and ceased only once court after court ordered the government to halt the first ban's implementation.[33]

B. During the First Travel Ban, The Government Consistently Denied Travelers Access to Counsel.

Citizens and non-citizens alike have a right to counsel of their choosing, at no expense to the government, in most circumstances where they are threatened with deportation.[34] Non-citizens are far less likely to have their rights abrogated when they are represented by attorneys.[35] We witnessed this first-hand in the earliest days following the first executive order's issuance, when travelers were denied access to their attorneys and were detained, deported, or stranded in airports around the world. Below is a representative sampling of clients, at airports across the country, who were denied access to counsel and, as a result, suffered significant abuses and violations of their due process rights:

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[31] *See* Jane Arraf, *Deported With A Valid U.S. Visa, Jordanian Says Message Is 'You're Not Welcome'*, National Public Radio (Feb. 24, 2017) http://www.npr.org/sections/parallels/2017/02/24/517023337/deported-with-a-valid-u-s-visa-jordanian-says-message-is-youre-not-welcome.

[32] *See generally* Attachments B-O; *see also* Emanuella Grinberg & Elliot C. McLaughlin, *Travel ban protests stretch into third day from US to UK*, CNN (Jan. 31, 2017) http://www.cnn.com/2017/01/30/politics/travel-ban-protests-immigration/.

[33] *See* Isaac Arnsdorf, *Trump officials slow-walked court orders on travel ban*, Politico (Feb. 3, 2017) https://secure.politico.com/story/2017/02/trump-officials-travel-ban-234633.

[34] *See* 8 U.S.C. § 1229(b)(4)(A) (providing that noncitizens "shall have the privilege of being represented, at no expense to the Government, by counsel of the alien's choosing who is authorized to practice in such proceedings"); *Orantes-*

At Dallas Fort-Worth, when we presented G-28 representation forms, CBP officials curtly advised us that they were not speaking with or accepting paperwork from attorneys.[36] The attorneys tried to assist an elderly, ailing Sudanese woman with a visitor's visa who required wheelchair assistance to disembark her flight.[37] She did not speak English, but was made to understand from CBP officials that she would be deported and not allowed to re-enter the U.S. for five years if she did not sign a withdrawal for request for admission.[38] CBP officials repeatedly refused to allow her attorney, an *amicus* hereto, to see her.[39] After a long detention, her three children and their families were distraught to learn that she had been coerced into signing a document she did not understand, and was put on a 25-plus hour return

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Hernandez v. Thornburg, 919 F.2d 549, 554 (9th Cir. 1990) (noncitizens have due process right to retain counsel of their choice at their own expense).

[35] *See generally* Access to Counsel in Immigration Courts, https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf.

[36] *See* Patnaik Decl. ¶4 (Attachment K).

[37] *See* Valko Decl.¶¶5, 12 (Attachmet N).

[38] *See id.*

[39] *See id.*

flight to Sudan—*after* the nationwide Temporary Restraining Order ("TRO") was issued by the Eastern District of New York.[40]

At San Francisco Airport, one of our clients, an Iranian man with a valid K-1 visa, was detained upon landing.[41] He was held for more than 30 hours – at no point was his attorney, an *amicus* hereto, allowed to contact him.[42] Similarly, at O'Hare Airport in Chicago, CBP officials refused to allow any of the detainees to have access to their attorneys, and refused to basic amenities like food, including for an elderly woman who was shaking and close to fainting.[43]

At Los Angeles International Airport, our clients were deported after habeas petitions were filed on their behalf.[44] Airport attorneys repeatedly requested access to clients throughout the weekend, or at least for panic-stricken family members to speak to the detained travelers, but CBP repeatedly denied the requests.[45] Despite a CBP Section Chief's acknowledgement of the nationwide TRO barring removal of travelers, an Iranian citizen on a student visa studying for her Master's degree was deported.[46]

At Dulles International Airport ("Dulles"), airport attorneys were denied access to two clients, young men arriving on immigrant visas to join their U.S.

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[40] *See id.*; *see generally Darweesh*, 2017 WL 388504.

[41] *See* Krooth Decl. ¶¶3, 4 (Attachment I).

[42] *See* Krooth Decl. ¶9 (Attachment I).

[43] *See* Pryor Decl. ¶¶4, 6 (Attachment L).

[44] *See* Inlender Decl. ¶¶3, 9 (Attachment H).

[45] *See* Corrales Decl. ¶¶12, 14 (Attachment F).

[46] *See* Corrales Decl. ¶11 (Attachment F); London Decl. ¶¶3, 5 (Attachment J).

Citizen father in the United States.[47] They were handcuffed by CBP agents for hours, forced to sign a form relinquishing their lawful permanent resident ("LPR") status, and summarily sent to Ethiopia where they currently remain.[48] CBP refused to let attorneys see them or other clients, even though counsel presented signed G-28 forms. CBP continued to refuse access even after a Temporary Restraining Order issued by the Eastern District Court of the State of Virginia enjoined the removal of LPRs and permitted access to counsel for LPRs detained at Dulles.[49] Instead, CBP informed counsel that they could not share any information about anyone in secondary inspection, and "there is no right to counsel in the airport."[50] New Jersey Senator Cory Booker attempted to hand deliver the TRO that CBP declined to acknowledge existed.[51] CBP refused to speak to him, Virginia Governor Terry McAuliffe, and several other sitting members of Congress, one of whom termed the situation a "constitutional crisis."[52]

Our clients and others across the country were denied due process and access to counsel as part of the scheme to summarily block their entry to the

[47] *See* Calderon Decl. ¶7 (Attachment E).

[48] *See* Shebaya Decl. ¶11 (Attachment M).

[49] *See* Calderon Decl. ¶¶8, 11, 13; Shebaya Decl. ¶¶7-8 (Attachment M).

[50] *See* Calderon Decl. ¶¶ 9-10; Shebaya Decl. ¶8 (Attachment M).

[51] *Booker Seeks Answers from DHS Secretary on Muslim Ban*, Press Release of Cory Booker United States Senator from New Jersey (Jan. 30, 2017) https://www.booker.senate.gov/?p=press_release&id=530 ("I was deeply disturbed that CBP employees declined to meet with me and have apparently refused to obey the injunction.").

[52] Rachel Kurzius, *Dulles Border Officials Coerced As Many As 60 People Into Signing Away Rights, Lawsuit Says*, DCist (Jan. 30, 2017) http://dcist.com/2017/01/constitutional_crisis_at_dulles_as.php.

United States. Travelers were selected for additional scrutiny solely because of their religion or national origin and held in areas where lawyers were not allowed to go.[53] This stymied attorney-client relationships, depriving us of the ability to learn all relevant facts and to present legal defenses based on applicable laws and constitutional protections.[54] It also wrongfully deprived our clients of the ability to fully understand their rights and potential remedies, particularly in situations where language barriers existed and they were being given forms to sign without explanation.[55]

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[53] See Attachments C through O.

[54] *See* Tara Golshan, *Donald Trump has built a wall. It's in Washington Dulles International Airport.*, Vox (Feb. 2, 2017) http://www.vox.com/policy-and-politics/2017/2/2/14453682/trump-wall-airport-dulles-immigration-ban; Cubas Decl. ¶¶6-11 (Attachment G).

[55] *See* Kelcee Griffis, *Immigration Ban Detainees Hurt by Lack of Counsel, DHS Told*, Law360 (Feb. 9, 2017) https://www.law360.com/articles/890331/immigration-ban-detainees-hurt-by-lack-of-counsel-dhs-told; Legal Action Center, Penn State Law's Center for Immigrants' Rights: *Behind Closed Doors: An Overview of DHS Restrictions on Access to Counsel*, (May 2012) at 3, 15 (finding that CBP's policies around denial of counsel rely "on outdated regulations and overly restrictive interpretations of guidance" and are in violation of the Administrative Procedure Act); Cubas Decl. ¶10 ("[T]he effective involvement of counsel also serves to increase compliance by government officers with court orders in understanding that an executive order is meant to guide agency officials in how to apply existing law—it does not actually supplant it.") (Attachment G).

II. THE SECOND TRAVEL BAN WILL COMPOUND THE HARMFUL EFFECTS OF THE FIRST TRAVEL BAN AND INTERFERE WITH OUR ABILITY TO PROVIDE EFFECTIVE LEGAL COUNSEL.

A. The Conditions Leading to Enforcement Problems During the First Ban Remain the Same, and Abuses Will Persist Under the Second Ban.

While the "targets" of the travel ban may have changed in theory, in practice, those responsible for enforcing the ban, and all the attendant problems therewith, remain unchanged. As with the first travel ban, CBP, as the primary enforcers of the travel bans, still wield unchecked authority over the space between airplanes and baggage claim. It is in this space, in the secondary interrogation rooms referred to as "secondary," that access to counsel is often most needed. With unfettered discretion and a complete lack of transparency,[56] there is "tremendous potential for abuse"—a potential that was realized during the first ban and will only be intensified if the second travel ban is enforced.[57] Indeed, the aftershocks of the travel bans continue to be felt in a "disturbing pattern [of] widespread discrimination and disorder [following] the Executive Orders of January 27 and March 6."[58] In post-travel ban America, the news is replete with examples of CBP's questionable discriminatory conduct on the basis of national origin or religion.[59] In all of the reported instances, the individuals were not

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[56] Statistics on CBP actions are generally unavailable, including on: justifications for questioning certain individuals; nationalities of detained individuals; why and when counsel is denied access; how often individuals are barred from U.S.-bound flights, and why; how long travelers are detained at various ports of entry, and how often, or why; if and how an individual's movements are restricted while in detention; whether requests for food, water, or medication are granted; and how often and why visas are revoked, to name a few. The American Civil Liberties Union ("ACLU") has filed FOIA requests and lawsuits in a dozen states regarding CBP implementation of the travel bans and its related activities to attempt to clarify how CBP activities may have violated rights of travelers since the first ban's issuance. *See* ACLU to FOIA Officer, Feb. 2, 2017. Letter. *Re: Request under Freedom of Information Act*, at https://www.aclu.org/legal-document/cbp-foia-filing-trump-immigration-ban.

[57] *See* Jonathan Blitzer, *When Trump's New Travel Ban Goes Into Effect, Watch the Border Agents*, The New Yorker (Mar. 7, 2017) http://www.newyorker.com/news/news-desk/when-the-new-travel-ban-goes-into-

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effect-watch-the-border-agents (stating that a top official at DHS commented, "We feel very good with how agents responded to implementing the directions of the first executive order." DHS stands by how it handled the first ban, and within the agency, the second travel ban is seen as a validation of the first one.).

[58] *See* Karen Yi, *Afghan man who helped military remains in N.J. seeking asylum*, NJ Advance Media (Mar. 31, 2017) http://www.nj.com/essex/index.ssf/2017/03/afghan_man_who_helped_military_remains_in_nj_deten.html.

[59] *See, e.g.*, Sam Levin, *Iranian woman visiting family on tourist visa detained in Oregon jail*, The Guardian (Mar. 29, 2017) https://www.theguardian.com/us-news/2017/mar/29/iranian-woman-detained-oregon-jail (a visiting tourist was detained overnight in an county jail 80 miles away from the airport she landed at for "minor administrative violations"); James McAuley, *U.S. detains and nearly deports French Holocaust historian*, N.Y. Times (Feb. 26, 2017) https://www.washingtonpost.com/news/worldviews/wp/2017/02/26/u-s-detains-and-nearly-deports-french-jewish-historian (a prominent French historian of Egyptian descent was "mistakenly detained" for over 10 hours and threatened with deportation); Steven Morris, *British Muslim teacher taken off US-bound flight: I was treated like a criminal*, The Guardian (Feb. 21, 2017) https://www.theguardian.com/us-news/2017/feb/21/british-muslim-teacher-taken-off-us-bound-flight-i-was-treated-like-a-criminal; Jerry Iannelli, *Reporter Says Her Trinidadian Husband was Detained at Fort Lauderdale Airport Last Night*, Miami New Times (Feb. 2, 2017), http://www.miaminewtimes.com/news/reporter-says-her-trinidadian-husband-was-detained-at-fort-lauderale-airport-last-night-9110815 (stating that CBP questioned him regarding his ethnicity and "how he got his name"); *Mem Fox, Australian Author, gets apology after being wrongfully detained at LA Airport*, Australian Broadcasting Corporation (Feb. 24, 2017) http://www.abc.net.au/news/2017-02-25/mem-fox-detained-at-los-angeles-airport-by-us-officials/8303366 (for the first time in more than 100 trips to the U.S., a 70 year old author was stopped for questioning; she described her detention as leaving

assisted by an attorney who could have helped navigate the interrogation or subsequent detention.[60] In one egregious example, a U.S. citizen was expressly reprimanded for making such a request. After boarding a flight in Los Angeles, he was detained by customs officers who told him he was "randomly selected" for additional screening.[61] When he refused to grant access to his phone, he was handcuffed and locked in the lower level of the airport for questioning.[62] His demand for access to legal counsel, was met with the response: "[i]f [you] need a lawyer, then [you] must be guilty of something."[63] After four hours of detention, he unlocked his cellphone, and following a search, was released.[64] *Amici* have grave concerns that enforcement of the second travel ban will be as arbitrary and discriminatory as the first travel ban.

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her feeling "physically assaulted" by an experience "any decent American would have been shocked to the core by."); Leinz Vales, *Muhammad Ali's son says he was detained at airport because he's Muslim*, CNN (Feb. 28, 2017) http://www.cnn.com/2017/02/28/us/muhammad-ali-son-ex-wife-detained-at-airport-don-lemon-cnntv/; Faiz Siddiqui, *Former Alexandria deputy police chief says he was detained at JFK Airport because of his name*, The Washington Post (Mar. 19, 2017) https://www.washingtonpost.com/local/trafficandcommuting/former-alexandria-deputy-police-chief-says-he-was-detained-at-jfk-airport-because-of-his-name/2017/03/19/9428f02e-0cc5-11e7-ab07-07d9f521f6b5_story.html (despite CBP instructions governing the hour-and-a-half long detention to "remain seated at all times" and that cellphone use was "strictly prohibited," a CBP officer handling his case claimed that Hassan was not being detained).

[60] *See id.*

[61] *See id.*

[62] *See id.*

[63] *See id.*

[64] *See id.*

Having witnessed these events, and with news of the impending second travel ban, legislation was introduced in both houses of Congress that would guarantee access to legal counsel in limited circumstances where the "lawyer is literally on the other side of the door waiting to talk to" their client.[65] Senator Harris, the congresswoman introducing the law in the House of Representatives, called the first travel ban "inhumane," stating that attorneys should be allowed into a CBP detention to "uphold principles of due process and fair treatment."[66] Truly, forewarned is forearmed. Still, preparation can only go so far, and being prepared for inevitable legal battles does not prevent them. Until such legislation is passed guaranteeing access to counsel, enforcement of the second ban will result in similar abuses as suffered during the first travel ban, not only trapping travelers abroad but also abandoning them to fend for themselves in the legal no-man's land of CBP's secondary interrogation.

B. The Second Travel Ban Foments Fear and Uncertainty for our Clients and their Communities.

The effects of the travel bans extend well beyond the airports. The travel ban executive orders "affected American society and created a culture of fear amongst immigrant communities."[67] For fear of being permanently separated from their families, our clients hesitate to travel for work or family funerals or weddings.[68] Immigration attorneys are inundated with requests for assistance and advice about matters that in the past would have been routine and would hardly have necessitated a legal consultation.[69]

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[65] Sarah D. Wire, *Sen. Kamala Harris pushes to guarantee access to legal counsel for those detained upon entry to the U.S.*, L.A. Times (Feb. 9, 2017) http://www.latimes.com/politics/essential/la-pol-ca-essential-politics-updates-sen-kamala-harris-pushes-for-right-to-1486678257-htmlstory.html.

[66] Representative Jayapal and Senator Harris Introduce Access to Counsel Act, Press Release of Pramila Jayapal, U.S. Representative for Washington's 7th District (Feb. 9, 2017) https://jayapal.house.gov/media/press-releases/representative-jayapal-and-senator-harris-introduce-access-counsel-act.

The fears are rational. Should the stay on the travel ban be lifted, many individuals with ties to the six countries will find themselves in situations where they cannot be reunited with family; where their livelihoods are threatened because of an inability to travel to and from the United States for work; or where their applications for entry are delayed indefinitely or denied to people who fear for their lives.[70] Even those with strong legal challenges would have to find resources to litigate and endure long delays and logistical difficulties, particularly those pursuing legal remedies outside the United States.[71] Individuals placed in deportation proceedings because of the travel bans' arbitrary implementation may wait for years for a resolution in a court system so backlogged that hearings are

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[67] Dalal Hillou, *Climate of Fear: The Social Impact of the Trump Administration's Immigration Policies*, AM. UNIV. J. OF GENDER, SOC. POL & LAW (Mar. 5, 2017), http://www.jgspl.org/climate-fear-social-impact-trump-administrations-immigration-policies/.

[68] *See, e.g.*, Baron Decl. ¶12 (Attachment D); Ahmad Decl. ¶¶27-32 (Attachment C); Shebaya Decl. ¶13 (Attachment M); Cubas Decl. ¶14 (Attachment G).

[69] *See, e.g.*, Ahmad Decl. ¶¶27-32 (Attachment C); Cubas Decl. ¶15 (Attachment G).

[70] *See* Cubas Decl. ¶14 (Attachment G); Shebaya Decl. ¶¶13-14 (Attachment M).

[71] Plaintiff's Motion for Preliminary Injunction and/or Temporary Restraining Order at 16 in *IRAP v. Trump*, No. 8:17-CV-00361-TDC, 2017 WL 1047709 (D. Md. Mar. 14, 2017).

scheduled up to six years into the future.[72] Justice delayed is justice denied: a student's education is derailed; the worker who lost his visa cannot support himself without an authorization to work; evidence fades and witnesses move on.

The second travel ban continues to target individuals based on their national origin and religious affiliation.[73] If the district court's stay is lifted, our clients and travelers in immigrant communities will suffer a severe chilling effect on their ability to live their lives with predictability and mobility.

C. Enforcing the Second Travel Ban Will Impair our Ability to Counsel Clients.

The legal uncertainty wrought by the shifting legal landscape and arbitrary implementation and enforcement of the travel bans compromises our ability to counsel clients on their rights.[74] While this handicap was particularly pronounced when we were denied access to our clients at the airports, logistical difficulties loom larger for attorneys counseling clients affected people are largely outside the United States, stranded in foreign countries or unable to obtain processing of their visas so that they can enter the United States. Simply put, the travel ban strips us of the ability to comfort clients that they can do basic things like travel for work or vacation or invite their families to visit; instead, our role has become to confirm their fear and doubt.[75] Now we must advise clients that if they book future travel, they may be forced to cancel their plans or risk being trapped outside of the United States if the preliminary injunction against the ban is lifted.[76] The utter lack of clarity and guidance that is normally provided alongside executive orders turns previously reasonable alternatives into gambling propositions.[77] Our clients are unsure how to navigate the new post-travel-ban reality and its collateral consequences; so are their attorneys.[78]

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[72] Charlotte Cuthberson, *Chronic Shortage of Judges Clogs Immigration System*, Epoch Times (Mar. 15, 2017), http://www.theepochtimes.com/n3/2232661-chronic-shortage-of-judges-clogs-immigration-system/.

[73] *See, e.g.*, *IRAP v. Trump*, 2017 WL 1018235, at *18; *see also* Plaintiffs-Appellees Brief (Doc. No. 74) at 16; *see generally* Executive Order Protecting The Nation From Foreign Terrorist Entry Into The United States (Mar. 6, 2017) at https://www.whitehouse.gov/the-press-office/2017/03/06/executive-order-protecting-nation-foreign-terrorist-entry-united-states.

[74] *See* Ahmad Decl. ¶¶27-32 (Attachment C); Cubas Decl. ¶15 (Attacj,emt G); Baron Decl. ¶13 (Attachment D).

CONCLUSION

Having witnessed firsthand the fallout from the first travel ban, and having seen its lingering effects on our client communities—in airports and border crossings across the nation, and in our offices with our clients—we expect that enforcement of the second travel ban will exacerbate the harm of the first ban. Therefore, we respectfully request that this Court deny the Appellants' request to lift the preliminary injunction issued by the District Court.

By: */s/ Michael B. Roberts*
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[75] *See* Simon, *supra* n.14.
[76] *See* Ahmad Decl. ¶¶ 27-32 Attachment C); Cubas Decl. ¶13 (Attachment G).
[77] *See* Cubas Decl. ¶15 (Attachment G).
[78] *See* Ahmad Decl. ¶¶ 27-32 (Attachment C); Cubas Decl. ¶¶15-16 (Attachment G).

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

The undersigned, counsel for *Amici Curiae*, certifies that:

1. This *Amici Curiae* Brief complies with type-volume limits because, excluding the parts of the document exempted by Fed. R. App. P. 29(a)(5), this brief contains 5,256 words.

2. This *Amici Curiae* Brief complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5) and 32(b), because it has been prepared in a proportionately-spaced typeface using Microsoft Word 2010 in 14-point Times New Roman font, with footnote text also in 14-point Times New Roman Font.

Dated: April 19, 2017

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CERTIFICATE OF SERVICE

The undersigned, an attorney, states that on April 19, 2017, the foregoing was filed electronically with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to all attorneys of record.

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